

LARSON · O'BRIEN^{LLP}

Hugh Hewitt
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July 3, 2018

The Honorable Ajit Pai, Chairman
The Federal Communications Commission
445 12th Street NW
Washington, D.C. 20554

Re: Caps on FM Ownership and the Impact on AM Radio.

Dear Chairman Pai:

I suspect you are deluged with comments from the public on the proposal to shift the caps on station ownership across the radio spectrum but particularly with regards to FM ownership. I write from the unique perspective of both having overseen notice and comment rule-makings as General Counsel of OPM under President Reagan and also as a host of a nationally syndicated talk show primarily though not exclusively found on the AM Band. I know the former role is complicated and often excruciatingly slow, but my life as a broadcaster means I have to urge you to slow down and rethink the path the FCC may be about to embark upon.

I am a generally a proponent of the efficiency of markets and of deregulation but of course there are and always have been exceptions that provide for the regulation of a limited resource like the radio bands. When highly regulated markets enter into deregulatory phases, profound and unforeseen consequences occur if the transition is abrupt or unforeseen.

I began my first radio talk show in 1990 and syndicated the program in 2000. On both occasions I took into account the regulatory structure in planning career moves and capital investments, as well as the opportunity costs of choosing radio at one point over television. The start of my broadcast career coincided with the end of the pervasive regulation of content on the radio. This was the start of a golden era of diverse content in the news-talk category, almost all of it on AM stations and of course led by the launch of Rush Limbaugh's show.

AM was moribund at the time and Rush rescued it in many ways. Now vibrant, AM proved to be a much needed platform for ideological diversity as well as new national and local content. Ideas blossomed across the dial. Many professionals like me saw that opportunity and jumped in. We relied on the regulatory promise of no content controls based on ideology, and that deregulation worked wonderfully well.

But the radio "mall" I and other talk show hosts moved into required competition to thrive. No one could corner the market because of the caps, and the subcaps kept any one market participant from controlling any particular market. Stations had to compete for audience based on the quality of our content. The programs that succeeded did so over years and years of effort and under the structure of subcaps preventing monopoly. We all relied on an existing rules set.

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Now I fear the removal of those subcaps will lead to the migration of many, and perhaps a majority of listeners from the AM band to the FM band as has happened in markets where shows are simulcast on both bands. Some of this is inevitable. But the removal of the FM subcaps would have a quite foreseeable effect of bleeding out the listeners to AM radio. This would raise barriers to entry for new shows, lessen the diversity of existing programming and generally darken the future of AM radio, perhaps in a relatively short period of years.

Thus I urge you to reconsider the abandonment of the FM subcaps and to study this foreseeable impact of audience migration from AM to FM if subcaps are removed or significantly altered.

The market and its participants, including me, at a minimum require a long runway to a deregulated world as the reliance damages from a sudden shift in the highly structured market would be significant and very difficult to predict in the absence of detailed studies of the various markets in which there is cross-ownership of stations.

The market generally does work, except when it has been so closely regulated as to induce reliance on existing rule sets only to see those rule sets up-ended in a span of a very brief time. I'm certain that the public's interest in keeping the AM band alive and thriving for all points of view and for relatively new and diverse voices will persuade you and your fellow commissioners if given time and space to develop the case. No doubt the comments of many conservatives about the need to move slowly into deregulation will surprise many and may even interest the readers of FOIA requests, but I am ready to defend the idea of government avoiding unnecessary and destructive sudden shifts in regulatory approach, especially when the consequences will be to limit the diversity of points of view in an already generally narrow range of opinions across mainstream legacy media such as the television networks. Thank you for your consideration and I hope you will not hesitate to call on me for additional comment if that would be useful.

Sincerely,

Hugh Hewitt
Host, The Hugh Hewitt Show
Partner, Larson O'Brien LLP
Professor of Law, Fowler School of Law, Chapman University.